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Attorneys for Plaintiff,
ROBERT MCGOWN

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ROBERT MCGOWN,) Case No.:
)
)
Plaintiff,)
vs.) **COMPLAINT and JURY DEMAND**
) **(Telephone Consumer Protection Act)**
CAPITAL ONE BANK (USA), N.A.,)
)
)
Defendant.)
)
)

COMPLAINT

ROBERT MCGOWN (Plaintiff), by his attorneys, alleges the following
against CAPITAL ONE BANK (USA), N.A., (Defendant):

I. INTRODUCTION

1. Plaintiff brings this action on behalf of himself individually seeking damages and any other available legal or equitable remedies resulting from the illegal

1 actions of Defendant, in negligently, knowingly, and/or willfully contacting
2 Plaintiff on Plaintiff's cellular telephone in violation of the Telephone
3 Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.* and in violation
4 of California's Rosenthal Fair Debt Collection Practices Act (hereinafter
5 "RFDCPA"), Ca Civ. Code § 1788.17.
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8 2. The TCPA was legislated to prevent companies like CAPITAL ONE BANK
9 (USA), N.A. from invading Americans' privacy by stopping abusive "robo-
10 calls." The legislative history "described these calls as 'the scourge of modern
11 civilization, they wake us up in the morning; they interrupt our dinner at night;
12 they force the sick and elderly out of bed; they hound us until we want to rip
13 the telephone out of the wall.' 137 Cong. Rec. 30, 821 (1991). Senator
14 Hollings presumably intended to give telephone subscribers another option:
15 telling the autodialers to simply stop calling." Osorio v. State Farm Bank,
16 F.S.B., 746 F.3d 1242, 1255-56 (11th Cir. 2014).
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21 II. JURISDICTION AND VENUE

22 3. Jurisdiction of this Court arises under 28 U.S.C. §1331 and 47 U.S.C. §
23 227(b)(3). See Mims v. Arrow Financial Services, LLC, 565 U.S. 368 (2012)
24 holding that federal and state courts have concurrent jurisdiction over private
25 suits arising under the TCPA.
26
27

4. Venue is proper in the United States District Court for the Northern District of California pursuant to 28 U.S.C § 1391(b) because Plaintiff resides within this District and a substantial part of the events or omissions giving rise to the herein claims occurred, or a substantial part of property that is the subject of the action is situated within this District.

5. The violations described in this Complaint occurred in California.

III. PARTIES

6. Plaintiff is a natural person residing in San Francisco County, in the city of San Francisco, California.

7. Defendant is a corporation doing business in the State of California with its principal place of business located in McLean, Virginia.

8. At all times relevant to this Complaint, Defendant has acted through its agents, employees, officers, members, directors, heir, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers.

IV. FACTUAL ALLEGATIONS

9. Defendant placed collection calls to Plaintiff seeking and attempting to collect on alleged debts incurred through purchases made on credit issued by Defendant.

10. Plaintiff is the “called party.” See Breslow v. Wells Fargo Bank, N.A., 755 F.3d 1265 (11th Cir. 2014).

11. Defendant placed collection calls to Plaintiff's cellular telephone at phone number (415) 852-02XX.

12. Defendant placed collection calls to Plaintiff from phone numbers including, but not limited to (800) 955-6600.

13.Upon information and belief, based on the number, frequency and timing of the calls, and on Defendant's prior business practices, Defendant's calls were placed with an automatic telephone dialing system. Defendant's calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A).

14. Defendant used an “automatic telephone dialing system,” as defined by 47 U.S.C. § 227(a)(1), to place telephone calls to Plaintiff seeking to collect a consumer debt allegedly owed by Plaintiff.

15. Defendant's calls were not for emergency purposes, which would be excepted by 47 U.S.C. § 227(b)(1)(A).

16. Defendant's calls were placed to a telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. §227(b)(1).

17. Defendant never received Plaintiff's "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

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2 18.On or about August 30, 2017, Plaintiff spoke with a representative of
3 Defendant's company at phone number (800) 955-6600 and told Defendant to
4 stop calling his cellular telephone.
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7 19.During the conversation on August 30, 2017, Plaintiff gave Defendant's
8 representative his full social security number to assist Defendant's
9 representative in accessing his account before asking Defendant to stop
10 calling his cell phone regarding all of his accounts.
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13 20.Plaaintiff revoked any consent, explicit, implied, or otherwise, to call his
14 cellular telephone and/or to receive Defendant's calls using an automatic
15 telephone dialing system in his conversation with Defendant's representative
16 on August 30, 2017.
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19 21.Despite Plaintiff's request to cease, Defendant continued to place calls to
20 Plaintiff's cellular phone after June 8, 2018.
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23 22.Despite Plaintiff's request that Defendant cease placing automated collection
24 calls to Plaintiff via the use of an automatic telephone dialing system,
25 Defendant continued to place at least one hundred forty-six (146) telephone
26 calls via the use of an automatic telephone dialing system to Plaintiff's cellular
27 telephone.
28

23. Defendant placed the great number of telephone calls to Plaintiff with the sole intention of harassing Plaintiff in such a manner so as to cause Plaintiff to pay the alleged debt claimed by Defendant, even when Plaintiff admittedly had impaired ability to pay. This telephonic harassment caused Plaintiff considerable anxiety and emotional distress.

FIRST CAUSE OF ACTION
**NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER
PROTECTION ACT - 47 U.S.C. §227(b)(3)(B)**

24. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-23.

25. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 *et seq.*

26. As a result of Defendant's negligent violations of 47 U.S.C. §227 et seq., Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

27. Plaintiff is also entitled to injunctive relief prohibiting such conduct in the future.

WHEREFORE, Plaintiff, ROBERT MCGOWN, respectfully requests judgment
be entered against Defendant, CAPITAL ONE BANK (USA), N.A., as follows:

- a. Awarding Plaintiff statutory damages of five hundred dollars (\$500.00) multiplied by the number of negligent violations of the TCPA alleged herein, to wit: one hundred forty-six (146) for a total of seventy-three thousand dollars (\$73,000.00);
 - b. Awarding Plaintiff actual damages and compensatory damages according to proof at time of trial;
 - c. Granting Plaintiff such other and further relief as may be just and proper.

SECOND CAUSE OF ACTION
KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE
CONSUMER PROTECTION ACT
47 .S.C. § 227(b)(3)(C)

27. Plaintiff repeats and incorporates by reference into this cause of action the

allegations set forth above at Paragraphs 1-23.

28. The above listed acts and omissions of Defendant constitute numerous and

multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 *et seq.*

29. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 *et seq.*, Plaintiff is entitled an award of one thousand five hundred dollars

1 (\$1,500.00) in statutory damages for each and every violation, pursuant to 47
2 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
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4 30. Plaintiff is also entitled to injunctive relief prohibiting such conduct in the
5 future.
6

7 WHEREFORE, Plaintiff, ROBERT MCGOWN, respectfully requests
8 judgment be entered against Defendant, CAPITAL ONE BANK (USA), N.A., as
9 follows:
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- 11 a) Awarding Plaintiff statutory damages statutory damages of one
12 thousand five hundred dollars (\$1,500.00) multiplied by the number of
13 knowing and/or willful violations of TCPA alleged herein, to wit: one
14 hundred forty-six (146) for a total of two hundred nineteen thousand
15 dollars (\$219,000.00);
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17 b) Awarding Plaintiff actual damages and compensatory damages
18 according to proof at time of trial;
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20 c) Granting Plaintiff such other and further relief as may be just and
21 proper.
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24 **THIRD CAUSE OF ACTION**
25 **DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT COLLECTION**
26 **PRACTICES ACT**
27 **CA CIV CODE § 1788.17**

28 31. Plaintiff repeats and incorporates by reference into this cause of action the
allegations set forth above at Paragraphs 1-23.

1 32. Defendant violated the RFDCPA based on the following:

- 2 a) Defendant violated §1788.17 of the RFDCPA by continuously failing
3 to comply with the statutory regulations contained within the FDCPA,
4 15 U.S.C. § 1692 et seq.

5 WHEREFORE, Plaintiff, ROBERT MCGOWN, respectfully requests
6 judgment be entered against Defendant, CAPITAL ONE BANK (USA), N.A., as
7 follows:

- 8 a) Declaratory judgment that Defendant's conduct violated the Rosenthal
9 Fair Debt Collection Practices Act;
10 b) Statutory damages of \$1,000.00 pursuant to the Rosenthal Fair Debt
11 Collection Practices Act, *Cal. Civ. Code* §1788.30(b);
12 c) Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair
13 Debt Collection Practices Act, *Cal. Civ Code* § 1788.30(c), and;
14 d) Actual damages and compensatory damages according to proof at
15 time of trial;

16 **JURY TRIAL DEMAND**

17 33. Plaintiff demands a jury trial on all issues so triable.

18 RESPECTFULLY SUBMITTED,

19 DATED: April 16, 2019

20 **THE LAW OFFICE OF JEFFREY
21 LOHMAN, P.C.**

1 By: /s/ Jeremy E. Branch
2 Jeremy E. Branch
3 Attorney for Plaintiff
4 Email: JeremyB@jlohman.com
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